IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 369 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHISH MANUBHAI MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

RULE SERVED for Respondent No. 2

MR PARESH UPADHYAY for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. Order dated 3.6.1999 of Additional Sessions Judge, Morbi, is under challenge in this revisino.

2. Brief facts giving rise to this revision are as under :

Criminal Case No.384 of 1993 was pending before the Judicial Magistrate First Class, Wankaner. One Umar Abdulla was one of the surety of the accused in that case. The accused absconded and thereafter notice was issued to the sureties. The surety Umar Abdulla appeared and informed the learned Magistrate that though his name and the name of surety in the Bond is the same yet he never stood as surety and he also pointed out discrepancy in his age (actual) and his age shown in the surety bond. It appears that the surety bond was identified by the revisionist as an Advocate who also identified the surety Umar Abdulla before the learned Magistrate. No notice was given to the revisionist either by the Magistrate or by the Additional Sessions Judge, before passing the impugned order as to what was his stand on the stand taken by the surety Umar Abdulla. The Magistrate straight-way directed police investigation u/s.156(3) Cr.P.C. This order of the Magistrate was challenged in revision before the Addl. Sessions Judge, Morbi. The Addl. Sessions Judge, Morbi was of the view that no action u/s.156(3) Cr.P.C. could be taken by the learned Magistrate on the facts and circumstances of the case. The surety, not only pleaded his discharge but also pleaded that the trial Magistrate should take penal action against the concerned Advocate, namely, the revisionist in this revision who had identified some other person in his place before the learned Magistrate. Inspite of this averment it is surprising that no show cause notice was given to the Advocate who identified the surety. The Addl. Sessions Judge was of the view that in such cases when the offence was committed in relation to any proceeding in the Court, action could be taken only on a complaint in writing by such Court to the concerned police station. The Affidavit of the surety was filed before the Magistrate of Wankaner Court. It was thus clear that the allegation was that purgery was committed before the Magistrate of Wankaner Court in Criminal Case. The Addl. Sessions Judge on these facts found that only the Registrar of the said Court and the Magistrate was competent to initiate criminal action. With this observation he held that the impugned order was illegal. After allowing the revision he directed the Registrar, before whom false Affidavit was filed or his successor Registrar, to file complaint in writing before the concerned Police station.

3. Learned Counsel for the revisionist has contended

before me that this Course was also not open to the learned Addl. Sessions Judge, namely, direction to the Registrar to file written complaint before the concerned Police station. On the other hand according to him provisions of Section 340 Cr.P.C. should have been followed. Shri K.C.Shah, learned A.P.P. has also conceded to the view that show cause notice should have been given to the Advocate against whom penal action was proposed before lodging the complaint with the police station and unless some preliminary inquiry was done and prima facie evidence was found that the advocate was prima facie guilty for false identification of wrong surety then only such action could be taken.

4. Shri Paresh Upadhyay, appears for the Registrar of Wankaner Court. The participation of the Registrar in such proceedings is consequent upon the direction of the Addl. Sessions Judge, Morbi to file complaint with the Police Station. As such no further hearing is to be affoded to Shri Upadhyay.

5. In view of aforesaid discussion I am of the view that the order of the learned Magistrate as well as of the Addl. Sessions Judge, Morbi are illegal and cannot be sustained. The Revision, therefore, succeeds and is allowed. The impugned order of the Addl. Sessions Judge, Morbi is set aside. The matter is remanded to the Judicial Magistrate, First Class, Wankaner, who shall, after holding preliminary inquiry and giving opportunity to show cause to the revisionist Advocate and the so called surety Umar Abdullah and following the procedure contemplated u/s.340 Cr.P.C., proceed with the matter in accordance with law.

sd/-

Date : September 07, 2000 (D. C. Srivastava, J.)

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